

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

February 24, 2009 Session

STATE OF TENNESSEE v. DAMON JARRID LEE

Appeal from the Criminal Court for Bradley County
No. M-05-398 Amy Reedy, Judge

No. E2008-01259-CCA-R3-CD - Filed September 4, 2009

The Defendant, Damon Jarrid Lee, appeals from his convictions in a bench trial for forgery involving property valued at least \$10,000 but less than \$60,000, a Class C felony, and forgery involving property with a value less than \$1000, a Class E felony. He was sentenced to three years of probation and one year of probation, respectively, to be served concurrently as a Range I, standard offender, for an effective sentence of three years' probation. On appeal, he challenges the sufficiency of the evidence to convict him of the offenses, specifically evidence of fraudulent intent. We affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, JJ., joined.

R. Dee Hobbs, Chattanooga, Tennessee (on appeal); and Kevin E. Johnson, Richmond, Virginia (at trial), for the appellant, Damon Jarrid Lee.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; Robert Steve Bebb, District Attorney General; and A. Wayne Carter, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

This case relates to a Tennessee limited liability company's (LLC) purchase of the ownership interest of one of its members, the transfer of the ownership interest, and the endorsement of a check by one of the members of the LLC. At trial, John W. Holden, Jr., testified that he, Kenneth H. Rayborn, James P. Runyan, Jr., and the Defendant were the founding members of Mountain Lake Estates, LLC, a company located in Bradley County. He stated that the agreement among the four men was as follows: he and Rayborn would be "silent investors" in the LLC; the Defendant, a practicing attorney, would obtain permits for the LLC and would run the LLC as its secretary; and Runyan would contribute all the construction work and equipment to build a road in the development they were planning. He stated that neither the Defendant nor Runyan contributed money to the LLC.

He said he and Rayborn each contributed \$75,000 to fund the purchase of land by the Defendant on behalf of the LLC at an auction. He said he and Rayborn obtained a line of credit for the LLC. Holden stated that he owned Pioneer Credit, a consumer financing company.

Holden testified that he had known Runyan for years, that they were good friends, and that Runyan had asked him to finance a line of credit for a developer. Holden said he granted the line of credit. He said that he knew when they were setting up the LLC that Runyan had some kind of criminal record, that he asked Runyan about it, and that Runyan told him he had paid dearly for a mistake and would not make the mistake again.

Holden testified that the Defendant telephoned him shortly after the LLC was formed to say that Runyan wanted to leave the entity. He said the Defendant told him that Runyan needed money for his construction company, that the Defendant was representing Runyan in this transaction, and that the LLC could buy Runyan's share for \$30,000. He said he discussed the matter with Rayborn and agreed on that amount because they had not yet developed the land. He stated that he and Rayborn did not want Runyan to leave because Runyan had the expertise to build the roads and to do the job well. He stated that they asked Runyan later to correct the roads that another person had begun. He said Runyan later told them that he agreed to the buyout because he thought that Holden and Rayborn wanted him out of the LLC. Holden said he did not try to remove Runyan from the LLC. He stated that three to six months elapsed until he next saw Runyan, whom he suspected had hurt feelings from the buyout. He said the LLC would have been better had Runyan remained a member. He said that the check for \$30,000 was to go to Runyan and that there had been no discussion that Runyan owed the Defendant money for legal services. He said he had been unaware that the check had been issued to both Runyan and the Defendant until he looked at the LLC records after the Defendant abandoned the LLC and moved out of state. He stated he and Rayborn reviewed the LLC's records and saw that some records had been altered. He said the check was in the records. He said he had no input regarding where the check's proceeds went. He said his relationship with the Defendant had been good until he started reviewing the LLC's records. Holden stated that while the Defendant had the authority to sign the LLC's checks, he did not have authority to sign Holden's or any other person's name.

Holden testified that his niece had been the Defendant's wife and that he tried to help the couple and their family in any way possible. He said he had been glad his niece and the Defendant relocated to the Cleveland area after the Defendant finished law school.

Holden testified that the LLC project originated when he and Rayborn drove to an auction the same day as the Tennessee-Arkansas football game. He said he and Rayborn would fund the LLC if the Defendant and Runyan, both of whom were at the auction, purchased the land for the LLC for \$10,000 per acre.

On cross-examination, Holden testified that the Defendant agreed to perform all the legal work for the LLC in exchange for a twenty-five percent share of the LLC. He agreed that Runyan would provide all the equipment necessary to install the roads and would charge the LLC only for wages, fuel, and other labor fees. He said the Defendant was authorized to write checks on the

LLC's behalf. He stated the Defendant was authorized to write a check buying out Runyan's share, if that was what Runyan wanted. He said he clearly expressed this to the Defendant.

Holden testified that as the owner of Pioneer Credit, he was not sure if Runyan or his agent had requested loans either on Runyan's or R&E Construction's behalf around January 15, 2002. He said Runyan did not contact him directly regarding a loan.

Holden testified that he and Rayborn thought the Defendant deposited the \$30,000 check made payable to James S. Runyan and the Defendant into the Defendant's personal bank account. He said he and Rayborn asked Runyan about the check. He said Runyan told them that he did not know of the check, although "Transfer of Runyan's Interest in LLC" had been written on the memorandum line, that he did not sign the check, and that his name was not James S. Runyan. He said Rayborn inquired about the check at his banks and learned that the check was deposited into the Defendant's trust account. He said Runyan had not approached him claiming that he was entitled to twenty-five percent of the LLC or that the transfer document was fraudulent. He said Runyan had not filed a civil action to reenter the LLC. He also stated that he had not begun proceedings to reinstate Runyan to the LLC. He stated he did not sign the amended operating agreement reflecting the new ownership. He said he did not recognize a March 20, 2001 document bearing the name R&E Properties. He thought the document might have been brought to him as a proposal. Holden said he was reimbursed for the \$75,000 he contributed to the land purchase when the LLC obtained a line of credit. On redirect examination, he said the Defendant abandoned everything, moved to California, and filed bankruptcy.

Kenneth H. Rayborn testified that he was a member of a bank's board and was a consultant for the bank. He said the LLC's origins were as follows. He said he and Holden were going to the Tennessee-Arkansas football game on September 8, 2001, and talked about buying land at an auction. He said Holden told him that the Defendant would be at the auction. He said that they drove to the auction and instructed the Defendant to bid on the land for them and that the Defendant purchased the parcels for them. He said that on September 11, 2001, he, Holden, Runyan, and the Defendant met in Holden's office. He said that the Defendant and Runyan wanted to become involved in the land plans and that he and Holden agreed to bring them into the project. He said that Runyan would contribute all the labor and development and would charge the LLC only for fuel and labor costs and that the Defendant would perform all the legal work and would manage the project. He said he and Holden obtained a loan with the Defendant as guarantor. He said the Defendant told them he would pay the interest on the loan. He said he instructed the Defendant to divide Holden's interest in the LLC among Holden's three children.

Rayborn testified that Holden called him at the office to tell him that Runyan wanted to leave the LLC for \$30,000. He said the Defendant was on the telephone with them. He said the Defendant told them they needed to remove Runyan from the LLC because Runyan was too busy to provide the construction services to the LLC and because Runyan needed money. He said the Defendant told them he knew of a contractor who could construct the roads for less than Runyan would charge. Holden said that he did not want to agree to a buyout because Runyan was going to charge them only for fuel and labor, but that after Holden agreed to the buyout, he changed his mind. He said he and Holden approved the buyout for \$30,000. He said the idea of paying Runyan's buyout was the

Defendant's. He said that neither he nor Holden would have become involved in developing the land if Runyan had not been there to do it for the LLC. He stated that neither of them was a developer and that they probably would have sold the land instead of developing it. He said there was no discussion that the buyout would go toward paying Runyan's legal fees, that the check would be payable to both Runyan and the Defendant, or that the Defendant would transfer Runyan's ownership interest to the Defendant. He said the LLC purchased Runyan's interest to accommodate Runyan's request. He said he never heard Runyan say he wanted to leave the LLC because he needed money.

On cross-examination, Rayborn testified that he stayed in the car when Holden went inside the auction building. He said he did not personally instruct the Defendant and Holden to purchase the land. He said that the decision to create the LLC was not made the day of the auction and that on the day of the auction, neither he nor Holden was interested in becoming business partners with other people. He said that while he and Holden had discussed the land project before the day of the auction, they only began discussing investing in the property that day. He said he was unaware if Holden had discussed the project with other people and said he did not think Holden had done so. He said he did not remember seeing a particular plat of the land, but he acknowledged that he had seen several of them. However, he said he had not seen one bearing the names of Holden and R&E Properties. He stated that the Defendant was required to be a guarantor of the line of credit and that Runyan was not required to guarantee the loan because Holden and Rayborn knew he would uphold his end of the bargain. He stated, however, that Holden and Rayborn knew they would be responsible for paying the loan if the Defendant did not pay the interest. Holden said the Defendant had authority to execute documents on the LLC's behalf. He said the Defendant was authorized to prepare documents relating to the buyout of Runyan's share. He said the Defendant did not have authority to sign on behalf of the members.

Rayborn testified that Runyan did not contact him to say he wanted to leave the LLC. He said he had no reason to contact Runyan to corroborate the Defendant's claim. He said Runyan learned he was no longer an owner of the LLC after Holden and Rayborn discovered what had occurred. He said that he had not instructed anyone to reinstate Runyan into the LLC and that he was unaware of any civil action taken to reinstate him. He said he did not see Runyan for over one year after January 15, 2002, and he said he and Holden were reimbursed for their \$75,000 contributions.

Rayborn testified that he and Holden involved themselves in the LLC's daily operations when the Defendant was away at a "treatment center." He said they were shocked to see that work had not yet been done because they had paid a lot of money for the work to be done. He said the two began asking questions and tried to obtain the LLC's records. He said they could not find the LLC's records in the Defendant's law office. He said that with the Defendant's ex-wife's assistance, they began compiling a list of expenses that had been paid. He said someone told them the Defendant used LLC funds to pay for his own debts. He said he was unable to find bank records for the LLC. He said there were no invoices. He said the LLC's checkbook had erasures in it, which they investigated further. He said the records obtained by the State from the bank were the result of a subpoena and were not provided by the Defendant. He said there had been no suggestion that the \$30,000 check proceeds would go anywhere other than to Runyan. He stated that if he had known that any portion of the \$30,000 would go to the Defendant, he would have spoken with Runyan

before agreeing to the buyout. He said he knew that the Defendant had represented or was representing Runyan on legal issues, but he said he did not know the subject matter. He said both the Defendant and Runyan said the Defendant was representing Runyan.

On redirect examination, Rayborn testified that the Defendant drafted the operating agreements for the LLC and that neither he nor Holden would have asked Runyan to pay interest on the loan because they thought he was no longer part of the LLC.

James P. Runyan, Jr., testified that he was the owner of R&E Construction. He said he had known Holden twenty-five to thirty years, during which he had borrowed money from him and purchased property with him. He said he met the Defendant after Holden had recommended him as an attorney. He stated that the LLC was premised on the agreement that the Defendant and he would purchase the land for the LLC and that he would build roads and install the water and power lines for the parcels. He said the Defendant drafted the operating agreement and other documents for the LLC. He stated that the original operating agreement listed his correct social security number but that his middle initial was incorrectly listed as "S." He said he did not sign the operating agreement and did not recognize the signature on the agreement.

Regarding his removal from the LLC, Runyan testified that one night the Defendant drove to Runyan's home. He said the Defendant told him that Holden and Rayborn wanted him out of the LLC because too many people were involved. He said they wanted to buy out his interest for \$30,000. He said he told the Defendant to pay him if the others did not want him in the LLC. He said the Defendant told him that the LLC's bank account was not yet set up but that he would write the check after the LLC deposited funds into the account. He said that the fact they wanted him out of the LLC hurt his feelings and that he did not speak to Rayborn or Holden for three to four months. He said he thought he was going to perform the construction work needed by the LLC. He said he never received a check for his share of the LLC and that he did not endorse the check from the LLC account for \$30,000 made payable to James S. Runyan and the Defendant. Two signatures were written on the back of the check, one purporting to be that of James S. Runyan and the other that of the Defendant.

Runyan testified that the first discussion about the check occurred after Holden called him to view the project and to estimate the value of the work performed. He said Holden told him that the work would cost \$300,000 to \$400,000. Runyan said he told Holden that the value of the work performed was approximately \$72,000. He said that Holden told him that several hundred thousand dollars had been spent and that Holden asked him to take over the development project to finish the roads and to install the water and underground power lines. He said that when he was working on the project at Holden's request, Holden and Rayborn came to him and asked him whether the check had been made out to him and if he had endorsed it. He said this was the first time he had seen the check, which he said was made out to someone else and was not signed by him. He stated he did not give anyone permission to sign his name on the check. He said he did not authorize the Defendant to sign his name on documents relating to the LLC.

Runyan testified that although he did not own R&E Construction in January 2002, he was now the owner. He said the company did not have financial problems until the Defendant headed

its Municipal Division. He said he did not owe the Defendant any money on January 14, 2002. He said the Defendant telephoned him five to six months before trial and asked him to meet with him, which Runyan said he did. He said that in this meeting, the Defendant told him he felt bad about what had happened and that the Defendant had tears in his eyes. He said the Defendant told him he would pay Runyan or his children the money he owed him. He said the Defendant told him he could obtain \$10,000 that day using his wife's credit card. He said he told the Defendant he would have to speak with the prosecutor before he would agree to this. Runyan acknowledged he served a prison sentence for "marijuana" but did not elaborate. He said that was his only criminal behavior.

On cross-examination, Runyan testified that he did not own R&E Construction before he went to prison in 1989. He said the company did not exist at that time. He said he later was an employee of the company when his children owned it. He said he told the Defendant that his children were the owners of the company, but that he probably signed documents if the Defendant gave them to him. He said he trusted the Defendant when the Defendant had asked him to sign papers with Rob Renner regarding the Municipal Division. He said that he would sign whatever the Defendant gave him because Holden had told him he could trust the Defendant and that he never knew what he was signing. He said he lost everything because he trusted the Defendant and had to sell his homes to pay project debts bid on by the Defendant. He said the Defendant was his attorney in 2001 and 2002 for all litigation in which he was a named party, along with R&E Construction. He said that the company lost around \$100,000 in one of the cases but that this loss did not cause financial difficulty for the company. He said the marijuana conviction was a felony.

Runyan testified that he did not remember if he signed a document giving him an ownership interest in the LLC. He said that he and the other three members owned the LLC. He said he and the Defendant were at the auction, that Holden came by, and that along with Rayborn, whom he said did not remember attending the auction, the four of them agreed to be partners and contribute to developing the land. He said the LLC was going to borrow money to buy the land. He said that he and the Defendant purchased the land that day and that Holden left. He said that while he did not invest money in the LLC, he was going to build the roads and install the power and water lines. He said he did not guarantee the loan because the other members ordered him out before the line of credit was obtained. He said that when he worked on the project after being asked by Holden, he charged the LLC only for fuel and labor because the LLC had lost \$400,000 to \$500,000 already. He said he did not profit from the arrangement. He said his feelings were hurt when the Defendant told him the others wanted him out of the LLC. He said he later found out the Defendant had lied to him. He said that he and Holden had been long-time friends and that was why he agreed to evaluate the work on the LLC's land. He said he did not remember guaranteeing any loans from Pioneer Credit around January 15, 2002. He said his son purchased a Mercedes using Pioneer Credit, but he said he did not remember the date. He said his signature was not on a document guaranteeing financing to R&E Construction from Pioneer Credit. He said he was unaware of a resolution from R&E authorizing the Defendant to sign all documents necessary to obtain loans from Pioneer Credit and when viewing the resolution, he stated the signature was that of his daughter. He said he did not remember telling the Defendant to prepare the documents relating to the buy-out. He said the Defendant stated he would bring the check to him. He said he did not contact either Holden or Rayborn because the Defendant had "bought him out" and he was waiting for the check to arrive. He said he did not know the Defendant was not going to pay him the \$30,000 until

Rayborn showed him the check and asked him whether he had endorsed it. He said the Defendant should have given him the check. He said he was certain that he received invoices from the Defendant about his legal services and denied that the Defendant would pay the bills for him. He said his accountant would maintain records of his bills, and he said that the accountant had the records the Defendant gave him, although much of the information was missing. He stated that he signed the R&E Municipal documents the Defendant presented to him and that the Defendant was only authorized to sign documents relating to R&E Municipal, not R&E Construction. He said his accountant only kept records for the business and not for Runyan's personal accounts. He said the accountant was aware of everything the business did. He said the Defendant owed the business \$25,000 in addition to the \$30,000 he owed Runyan.

Runyan testified that he had asked an architect to draw up a plat showing how many lots could be created on the land. He said Holden was not involved in this process. He said that he also did not show the plat to the members of the LLC because the price of the land before the auction was higher than the price obtained at auction and that this lower price gave the LLC more flexibility to plan the lots. He said the sketch was only for him and was not the same as the plans he asked the architect to prepare on March 20, 2001, for the LLC. On redirect examination, he testified he never told the Defendant he wanted to leave the LLC. On recross-examination, he testified he never requested being reinstated in the LLC.

The transfer of ownership document reads as follows.

In consideration of Thirty Thousand and No/100 Dollars (\$30,000) cash paid in hand, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, JAMES S. RUNYAN ("Transferor"), does hereby transfer and assign unto DAMON J. LEE, as the Secretary Member of Mountain Lake Estates, LLC ("Transferee"), all of Transferor's right, title and interest of every nature in and to the Transferor's interest (25%) in MOUNTAIN LAKE ESTATES, LLC. This transfer is not limited to but Specifically includes the transfer of all of transferor's interest of all real estate currently or hereafter held, owned, or leased by MOUNTAIN LAKE ESTATES LLC. In connection therewith, Transferor grants full irrevocable power of Attorney to Transferee, and hereby represents to the LLC that the interest has not been offered for sale, or in any other way encumbered by him or his agent(s) to any other person or business entity.

IN WITNESS WHEREOF, the undersigned has set his signature on the 14th day of January, 2002.

s/James S. Runyan
JAMES S. RUNYAN, Transferor

The State rested.

Robert P. Frost testified for the defense. He said he performed accounting work for R&E Construction and had done the personal income taxes of Runyan's children, who were associated with this business. He said he did Runyan's personal accounting in 2001. He stated the Defendant had been a consultant for R&E Construction regarding its Municipal Division and was responsible for bids and bid contracts. He said the Defendant performed the bookkeeping for this division within his law firm. He said he was unaware of the Defendant's providing legal services to Runyan as an individual. He said he requested documentation from the Defendant regarding the payroll tax filings for the Municipal Division. He stated that in 2002, he requested all the accounting documents when the Runyan family asked his firm to perform the bookkeeping for both R&E Construction and its Municipal Division. He said he knew the Defendant had been helping R&E Construction with some collection issues. Regarding loans, however, he said he would learn about them after the fact when he would request the promissory notes and monitor the bank statements and accounts. He said he was unaware of any litigation in which the Defendant represented Runyan as an individual. He stated that R&E Construction did not have an ownership interest in the LLC's land. He said that while the Defendant's records showed \$30,000 was credited to R&E Construction or Runyan, the firm's bookkeeping records did not reflect this transaction. He said that the Defendant was not involved in the bookkeeping for R&E Construction and that he was unaware of any documents showing the Defendant had deposited funds into his trust account that were unrelated to the waterline project unless the Defendant disclosed this information to him. He said the accounting firm would see disbursements from R&E Construction. He knew the Defendant had a payment arrangement with R&E Municipal that he would receive ten percent of its "fees." He said he was unaware of the Defendant's ever being named an officer of R&E Construction and had not listed him as an officer in the firm's tax returns. He stated that R&E Construction was his client, not the LLC. He said he was unaware that Runyan had been involved in the LLC. He said that if he had concerns about the Defendant's invoices, he would have contacted his client first and the Defendant second. He stated his firm did not have authority to approve invoices. He said his clients approve the invoices, and the accounting firm issues checks and keeps the books. He did not recall that Runyan and R&E Construction were having financial difficulties around January 15, 2002, but he said many projects were on-going and there were numerous outstanding loans.

On cross-examination, Frost testified that R&E Construction's account did not reflect a \$30,000 credit. He stated that Runyan had never shown him any documentation showing Runyan received the \$30,000, although he stated that Runyan would only present him with a 1099 form issued by R&E Construction when he worked there. He said that his firm took over the bookkeeping responsibilities for the Municipal Division in mid-2002 and that he tried to obtain all the records from the Defendant's office. He said that he obtained a backed-up file and a fax from the Defendant but that he had to obtain the other necessary documents elsewhere. He said he was unable to account for the ten percent fee the Defendant took from R&E Municipal. He said he could only see the net check the Defendant issued to R&E Construction from his trust account. He said the ten percent fee arrangement was in addition to the legal fees, for which the Defendant invoiced R&E Construction. He said he was never involved in a meeting where anyone mentioned that the \$30,000 from the LLC would go toward legal fees owed to the Defendant. On cross-examination, Frost testified there was a worksheet reflecting a payment by R&E Construction to Pioneer Credit for over \$25,000.

Walter "Chris" Krankemans testified that from April 2001 until November 2001, he worked as a law clerk in the Defendant's law firm while awaiting his bar examination results. He said he was admitted to practice in Tennessee and was a member in good standing of the bar. He said he worked on eight to ten legal matters for Runyan regarding R&E Construction. He said that Runyan was his contact for all these matters and that he never spoke with anyone else. He remembered a matter in which Runyan tried to enforce a claim on his own behalf, and not R&E Construction's. He said that he worked almost seven days a week and that Runyan was always at the office. He said he would be called into the Defendant's office during some of the conversations with Runyan, in which Runyan would tell the Defendant to "just get it done" and then leave. He stated the law firm had the authority to manage R&E Construction and to execute loan documents. He gave examples of tasks Runyan would give. He said Runyan would make statements such as, "[T]hey haven't paid me," while referring to a creditor of R&E Construction. He said he never met another person from R&E Construction. He said Runyan never told him that the Defendant did not have authority to act on behalf of R&E Construction. He said his understanding was the office had authority to act on "everything," including whether Runyan signed a loan document for a car. He said Runyan told the office to "take care of it." He stated that all members of the LLC were in the Defendant's office on September 11, 2001, and that he informed them of the terrorist attacks. He said, however, that he did not recall specific conversations from this meeting. He said he worked on the drafting of the LLC's operating agreement with the Defendant and inserted language into the document. He said he knew the Defendant was responsible for drafting documents for the LLC. He said he did not remember if the operating agreement authorized the Defendant to sign documents on behalf of other members. He said, however, that the Defendant was authorized to sign documents on behalf of the LLC's members, but he based this statement on the fact that the Defendant drafted all the documents pertaining to the LLC. He said he never spoke directly with Rayborn, but he said that he never heard Holden express dissatisfaction with the Defendant, either at the Defendant's home or at the Defendant's office. He said that Runyan never objected to the Defendant's actions on Runyan's behalf and that Runyan could not have been happier with the Defendant's services. He said that about seven to ten days after the operating agreement of the LLC had been prepared, all members went to the LLC's land and that no one expressed dissatisfaction with the operating agreement or claimed that anyone was acting outside the scope of the operating agreement.

On cross-examination, Krankemans testified he did not know that Runyan had an eighth-grade education. He said that because he did not handle any bookkeeping matters, he did not know that Runyan did not perform his own bookkeeping. He said he never heard Runyan give the Defendant permission to sign his name on LLC matters. He said he also did not hear Runyan tell the Defendant to apply the \$30,000 to legal fees that Runyan owed the Defendant.

On redirect examination, Krankemans testified that he never observed any actions or heard any statements in which Runyan limited the authority of the law firm to act on Runyan's behalf. On the contrary, he said he heard statements and observed behavior which led him to think the Defendant had authority to sign Runyan's name. On recross-examination, he said that in one of the cases in the firm, Runyan was a named defendant along with R&E. He said the firm did everything for Runyan, including drafting and signing documents.

Robert Bruce Renner testified that he was working on several projects in January 2002 with R&E Construction. He said the Defendant was Runyan's attorney. He said he saw that the Defendant was authorized to act on Runyan's behalf on the waterline project. He said he did not distinguish between James Runyan and R&E Construction and used them interchangeably. He said that although he received a power of attorney document, he did not remember whether the document authorized the Defendant to sign on R&E Construction's behalf or that of Runyan. He said that Runyan referred him to the Defendant to answer questions about the Municipal Division's four projects and that he began contacting the Defendant instead for these projects in January 2002. He said he did not recall an instance when the Defendant signed a document either on R&E Construction's behalf or for Runyan.

On cross-examination, Robert Bruce Renner testified that he had seen the resolution authorizing the Defendant to execute loan documents with Pioneer Credit for R&E Construction, including its officers. He said the agreement did not mention Runyan. On redirect examination, Robert Bruce Renner testified that he was present when the Defendant's ten percent fee compensation was discussed. He said he was not paid from the Defendant's trust account but instead from an R&E account. He said his checks were signed by either the Defendant or the Defendant's assistant, Brittany Kuber.

Bruce D. Renner testified that the Defendant was Runyan's attorney when Renner financed Runyan's work on the waterline project. He said Runyan told him the Defendant could sign any document for R&E Construction. He said that Runyan told him, "I am R&E and I make the decisions." He said Runyan referred him to the Defendant. He said Runyan never told him that the Defendant no longer had authority to act both for Runyan and for R&E Construction.

Brent Matthews, an assistant manager at Pioneer Credit, a consumer finance company of which Holden is the president, testified that he had direct knowledge of Runyan's loans with Pioneer. He said that in January 2002, there were seven outstanding loans "originated by or for" Runyan. He said both Runyan and Scott Runyan obtained one of the loans. He said this loan had been assigned to R&E Construction. He said he personally observed these two men sign the loan. He said that for another loan, the Defendant signed the three debtors' names (Scott E. Runyan, James P. Runyan, and D. Paula Driggers) and wrote "by DJL." He said Pioneer Credit verified the authority people had to sign on behalf of other people, and he said he knew of the resolution authorizing the Defendant to execute loan documents with Pioneer Credit for R&E Construction and for its officers. He said he would not submit the loan for payment without verifying the authority of someone to sign for another person.

David Goins, the office manager for Pioneer Credit, testified that in January 2002 he would have spoken with the parties involved with the loans and verified that someone had the authority to act on another person's behalf. He said he received paperwork authorizing the Defendant to sign Runyan's name on the loans. He said a customer could obtain a new loan to pay off an older loan from Pioneer. He said that Pioneer did not determine Runyan was a credit risk and that it would probably not have loaned money to him if they had determined he was a risk. He said that Pioneer did not lose confidence in Runyan's ability to pay and that he was unaware of any financial difficulties Runyan may have been having. He said the Defendant signed for the loans in order that

he could pick up the funds when the parties involved were out of town. He said he was certain he discussed the loans with Holden, the firm's president.

The Defendant testified that he first heard about the land when Holden told him of the auction and suggested that the Defendant should get involved with it. He said he was married to Holden's niece for almost seventeen years and met Holden in 1988. He said Holden told him that he would help him begin his legal career in Cleveland with another attorney and working with Pioneer Credit. He said his practice was composed of people either related to or involved with Holden. He said Runyan came to his office in 2001 about a case naming R&E Construction, Paula Driggers, and Runyan as defendants.

The Defendant testified that he agreed to perform the legal work of the LLC in exchange for a twenty-five percent ownership interest. He said he was a guarantor for the \$1.5 million loan the LLC obtained. He said that Runyan was also expected to guarantee the note but that Runyan was "in the middle of an absolute financial crisis." He said Runyan was involved in several projects at the time and one lawsuit. He said there were concerns about how Runyan would pay a judgment. He said Pioneer Credit was calling him about a \$25,000 loan Runyan owed that was due. He said Runyan "couldn't take on any more debt."

The Defendant testified that Rayborn initiated a discussion in October or November 2001 with him in which he said he wanted Runyan out of the LLC because Runyan was unwilling to guarantee the LLC's loan. The Defendant said he, Rayborn, and Holden spoke on the telephone regarding the amount of Runyan's outstanding loans at Pioneer Credit. He said he suggested a buy-out amount of \$30,000 because he knew Runyan needed to pay loans approximating \$30,000. He said there were three reasons to buy Runyan's share of the LLC: (1) Runyan had not guaranteed the LLC loan; (2) Runyan had not yet done any of the development work for the LLC, and (3) Runyan needed money to pay his bills.

The Defendant testified that he spoke with Runyan about the buyout. The Defendant said he told Runyan that there were bills to be paid, including payments to Pioneer Credit and bills for the Defendant's legal services on eight to ten matters and that he had not been paid in ninety days. He said Runyan told him to "do whatever you've got to do[.]" He said Runyan had never signed any LLC documents. He said he told the Defendant to "take care" of them. He said he also told Runyan that the others wanted him to leave the LLC, as well as that they needed to get the land development going. He said he told Runyan that his equipment was not even in Tennessee at the time.

The Defendant testified that he expressly created a paper trail for the transfer and payment. He said the documents contained a typographical error in Runyan's name, listed as "James S. Runyan" instead of "James P. Runyan." He said he wanted to protect the LLC from having to pay part of the judgment against Runyan to his creditors. He said he drafted a resolution removing Runyan from the LLC and filed it with the State. He claimed he signed this document with Runyan's authorization. He said there was no question in his mind that he was authorized to sign the transfer document because he had signed Runyan's name on checks, loan documents, and corporate documents. He said that all of Runyan's and R&E Construction's transactions came through his law office and that he collected all of Runyan's money in his trust account. He claimed

that by making the check payable to himself, the secretary of the LLC, he was taking Runyan's ownership interest and returning it to the LLC. He said he signed both signatures on the check in the presence of a bank teller and deposited the proceeds into his trust account, which he said contained other funds for Runyan. He said he deposited the funds not for his personal benefit, but as the secretary of the LLC. He said he then used the proceeds to pay Runyan's bills. He said Runyan had, in the past, told him to borrow money and use it to pay Runyan's creditors. He said he and Runyan discussed the \$30,000 and its use toward paying Runyan's bills. The Defendant stated that he told Runyan that Runyan needed to pay him and that Runyan said he needed the Defendant's continued services and that he could be paid with the funds. The Defendant said he did not receive the entire \$30,000 because he paid other creditors with the funds. He said he was unaware that Runyan objected to his handling of the funds.

The Defendant testified that he had Runyan's authorization to do "whatever it took, to sign whatever papers needed to be signed . . . that related to [the LLC]." He said that was how he and Runyan did business. He said he had no intent to deprive Runyan of any monies, which he then said Runyan did not deserve because he had not contributed to the LLC.

The Defendant testified that he signed the LLC's operating agreement with Runyan's approval. He said he had a carte blanche relationship with Runyan to act both on Runyan's behalf as an individual and on behalf of R&E Construction. He said that before 2006, a member of a member-managed LLC in Tennessee was the agent of the other members. He said Holden, as chief manager of the LLC, "made it clear" that the Defendant was responsible for the LLC. The Defendant said he received verbal authorization from Holden as well as by operation of law.

The Defendant testified that he did not hear from Holden or Runyan about the check. He said he and his family moved back to California on the same date as Runyan's affidavit of complaint. He said he learned this fact after he and his ex-wife filed bankruptcy, and he said he was a one-third owner of the LLC. He maintained that he acted appropriately in his relationship with Runyan. He said that he was urged by a family member to speak with Runyan and that he arranged a meeting, although Runyan had been very angry with him the last time they spoke. His recollection of the conversation differed from Runyan's. The Defendant said he told Runyan that if Runyan or the bankruptcy court could demonstrate that he had acted wrongly or owed Runyan money, he would do whatever was necessary to repay any money owed.

On cross-examination, the Defendant said he represented the LLC, as well as all its members. He said that in litigation involving Runyan or R&E when he represented named individuals as well as a business, the parties waived any conflict of interests. He said that he signed Runyan's name on Pioneer Credit loan documents at Runyan's direction. He agreed, however, that he signed others' names to some loan documents and wrote "by DJL" but that he did not do so on the check or the transfer of ownership document. He denied that Holden and Rayborn would pay the loan if he, as guarantor, did not make the loan payments.

The State called Kenneth H. Rayborn and James P. Runyan, Jr. as rebuttal witnesses. Rayborn testified that it was a lie to say that he told anyone that he wanted Runyan out of the LLC because Runyan would not sign as a guarantor for the loan. Runyan testified that he did not

authorize the Defendant to disburse the \$30,000. He said he did not tell him to take the money and apply it to his legal bills.

The trial court convicted the Defendant of forging Runyan's signature on the document purporting to transfer the member's ownership interest, which the trial court valued as less than \$1000. The trial court also convicted the Defendant of forging Runyan's signature on the \$30,000 check to buy Runyan's share of the LLC. However, the trial court acquitted the Defendant of theft of property valued \$10,000 or more but less than \$60,000, and a count of theft involving property valued more than \$60,000 was dismissed. The Defendant received an effective three-year sentence of probation as a Range I, standard offender.

On appeal, the Defendant contends the evidence is legally insufficient because the Defendant lacked the intent to defraud the victim in view of the Defendant's actual authority to execute documents for the LLC and apparent authority to execute documents for the victim and because the Defendant signed the check in the presence of a bank teller. He relies on State v. Mallory, 168 S.W.2d 787, 788 (Tenn. 1943), and State v. Stillwell, 54 S.W.2d 978, 979 (Tenn. 1932), for both claims.

The State responds that the evidence was legally sufficient to convict the Defendant of both counts because a trier of fact may infer intent from the facts and circumstances surrounding the offense. See State v. Roberts, 943 S.W.2d 403, 410 (Tenn. Crim. App. 1996), overruled on other grounds by State v. Ralph, 6 S.W.3d 251 (Tenn. Nov. 15, 1999). The State asserts that the victim denied authorizing the Defendant to sign his name regarding the LLC and that on occasions when the Defendant signed the victim's name on business documents relating to R&E Construction, the Defendant wrote that he was signing on behalf of the victim and signed both his name and the victim's.

In his reply brief, the Defendant argues that because the trial court acquitted the Defendant of theft, the trial court erred in concluding that the Defendant intended to defraud or harm the victim. He also claims that although Runyan claims he did not receive the funds, the Defendant paid Runyan's bills with the check's proceeds and that the proof does not show that Runyan ever agreed to provide construction or development services to the LLC.

Our standard of review when the sufficiency of the evidence is questioned on appeal is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979). This means that we may not reweigh the evidence, but must presume that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the State. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

Tennessee Code Annotated section 39-14-114 (1997) states that

- (a) A person commits an offense who forges a writing with intent to defraud or harm another.

- (b) As used in this part, unless the context otherwise requires:
- (1) “Forge” means to:
- (A) Alter, make, complete, execute or authenticate any writing so that it purports to:
 - (i) Be the act of another who did not authorize that act;
 - (ii) Have been executed at a time or place or in a numbered sequence other than was in fact the case; or
 - (iii) Be a copy of an original when no such original existed;
 - (B) Make false entries in books or records;
 - (C) Issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged within the meaning of subdivision (b)(1)(A);
- ...
- and
- (2) “Writing” includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and symbols of value, right, privilege or identification.

We conclude that the evidence is legally sufficient to support the convictions. The evidence reflects the Defendant forged the transfer of ownership document and the check paying Runyan for his interest in the LLC. The Defendant claims he lacked the requisite intent to defraud or harm Runyan. We disagree. Criminal intent may be inferred from the circumstances of the conduct or context in which the offense occurs. State v. Inlow, 52 S.W.3d 101, 105 (Tenn. Crim. App. 2000). While the Defendant may have been expressly authorized to execute certain documents on behalf of R&E and by operation of law in the member-managed LLC, the evidence does not reflect he had actual authority to sign documents on behalf of individual members of the LLC. He provides no citation to any statute authorizing him to sign in this capacity. The evidence reflected that Runyan did not authorize the Defendant to endorse the check or to make it payable to the Defendant. Instead, Runyan testified that he told the Defendant, who was acting for the LLC, to pay him for his interest. The Defendant signed Runyan’s name to the transfer document without noting that he was signing Runyan’s name with his approval and permission. On occasions when the Defendant had actual authority to sign the names of the corporate officers of R&E, he signed their names and wrote “by DJL” next to the signatures. The fact he did not sign the documents involved in the present case in the same manner is significant.

The Defendant’s claim that he must be acquitted of the forgeries when the trial court acquitted him of theft is unavailing because the evidence establishes guilt for the two forgery offenses for which the Defendant was convicted. See Wiggins v. State, 498 S.W.2d 93-94 (Tenn. 1973). The evidence reflected that the Defendant transferred Runyan’s interest to himself by forging Runyan’s signature, that the Defendant issued an LLC check made payable to both Runyan and himself, and that the Defendant forged Runyan’s endorsement on the check by not indicating that he was signing Runyan’s name with his permission. He is not entitled to relief.

The Defendant claims that although Runyan did not receive the check, he benefitted from the Defendant’s payment of his bills. This claim is unsubstantiated in the evidence. Frost testified

that while the Defendant's records show \$30,000 being credited to Runyan or R&E Construction, the bookkeeping records that Frost could compile did not reflect this alleged transaction involving loan payments by Runyan or R&E Construction to Pioneer Credit. Additionally, Frost testified that R&E Construction was not having the financial difficulties the Defendant alleged. The trier of fact accredited this and other testimony over that of the Defendant.

The evidence also reflects that the four members of the LLC agreed to perform various duties, whether funding, construction, or administrative, in exchange for equal shares of the LLC. The Defendant misstates the evidence in his brief when he claims Runyan did not agree to perform construction and development services, and he does not provide citation to the operating agreement to bolster his claim. He is not entitled to relief.

Based on the foregoing and the record as a whole, we affirm the judgments of the trial court.

JOSEPH M. TIPTON, PRESIDING JUDGE